

## Independent Contractor/1099 Twenty Point Test

In Accordance with the Fair Labor Standards Act, the **IRS** uses the following 20 questions during an audit to determine if an individual is a 1099 (independent contractor) or an actual employee. If you answer YES to any one of these questions you have an actual employee and can be fined heavily if you are treating them as a 1099.

1. **Continuing Relationship**- Independent contractors do not have a continually working relationship with a single employer.
2. **Workings for More than One Contractor**- Independent contractors perform services for more than one entity at the same time.
3. **Availability to the general public**- Independent contractors offer their services to the general public on a regular basis.
4. **Instruction**- Independent contractors do not receive instructions on how to perform and accomplish a job.
5. **Training**- Independent contractors do not receive training on how to complete a job.
6. **Personally Rendered Services**- Independent contractors have the right to hire employees or contract with other entities to perform actual jobs.
7. **Payment**- Independent contractors are paid by the job.
8. **Business Expenses**- Independent contractors are responsible for their own expenses.
9. **Tools and Materials**- Independent contractors provide their own tools, materials and equipment to perform the job.
10. **Work Location**- Independent contractors are free to choose where the work will be performed.
11. **Controls over assistance**- Independent contractors are free to decide to hire assistance to accomplish a job and to control their work activities.
12. **Work Hours and Schedule**- Independent contractors control their own hours and schedule for accomplishing results.
13. **Full Time Work Requirement**- Independent contractors are free to work when and for whom they choose.
14. **Required Work Order or Sequence**- Independent contractors determine the order in which they will perform the work.
15. **Required Reports**- A degree of control is suggested if a worker is required to submit regular oral or written reports.
16. **Investments in Facilities**- Independent contractors have a significant investment in facilities in the course of performing their job.
17. **Profit or Loss**- Independent contractors realize a profit or sustain a loss, based on the success in performing their work or service.
18. **Business succession or continuation**- operations or ability to be successful should not depend on the service of independent contractors.
19. **Discharge Rights**- Contracts with independent contractors cannot be terminated as long as they perform services in accordance with their contract.
20. **No Compensation Liability**- Independent contractors may be liable for a breach of contract if they leave without completing their work.